

1/26/09 (11)



Board of Selectmen

**TOWN OF ACTON**

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**DECISION**

#10/02/08-416

**525 Main Street**

Site Plan Special Permit  
January 26, 2009

GRANTED with Conditions

Decision of the Acton Board of Selectmen (hereinafter the Board) on the application of Joseph Pittorino, Partner, 88 Champs, L.L.C., 525 Main Street, Acton, MA (hereinafter the Applicant) for the property located at 525 Main Street in Acton, Massachusetts, owned by 88 Champs, L.L.C. c/o Joseph Pittorino, CSM & Companies, L.L.C. of 900 Chapel Street, Suite 701, New Haven, CT 06510. The property is shown on the 2007 Acton Town Atlas; map E-4 as parcel 78 & 86-1 (hereinafter the Site).

This Decision is in response to an application for a site plan special permit, submitted to the Board on October 2, 2008, pursuant to Section 10.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Rules and Regulations (hereinafter the Rules) to obtain site plan approval in accordance with Section 3.5.2 for an addition to expand existing office space. The Board opened a duly noticed public hearing on November 17, 2008, heard testimony from both the applicant and concerned abutters and then continued the matter to December 1, 2008. Due to

time constraints, the December 1, 2008 meeting was opened and the matter was immediately continued without discussion to December 15, 2008. The December 15, 2008 meeting was opened, further testimony was received from both the applicant and concerned abutters, and at which time the public hearing portion of the application was closed.

Board members Lauren Rosenzweig (Chair), Paulina Knibbe (Vice Chair), Peter Berry, Andrew Magee and Terra Friedrichs were present throughout all three of the hearings. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Town Clerk's office or the office of the Board at the Acton Town Hall.

## **1     EXHIBITS**

Submitted for the Board's deliberation were the following exhibits:

1.1.1 A properly executed application for site plan special permit was received October 2, 2008. The application is entitled "Site Plan Special Permit Application for 525 Main Street, Acton, MA" and dated September 30, 2008, prepared by and with plans drawn by Level Design Group, L.L.C., of 60 Man Mar Drive, Plainville, MA 02762. The plans submitted as part of the application are all produced by Level Design Group L.L.C. and originally dated June 20, 2008 and comprise the following 5 drawing sheets:

- Cover Sheet;
- C-1.0 - Existing Conditions (revised 11/22/08);
- C-2.0 - Grading Plan (revised 11/22/08);
- C-2.1 - Landscape Plan (revised 11/22/08);
- C-3.0 - Layout & Materials (revised 11/22/08), and;
- 4.0 - Typical Details (revised 11/22/08).

Other drawings and additional submissions with the application consisted of the following:

- floor plan and elevation drawings produced by Christiaan Dinkeloo Associates, L.L.C. (Architects) dated May 1, 2007 (revised 8/15/08);
- a "Plan of Land" for the subject property prepared by Acton Survey & Engineering, Inc. dated January 10, 1978, and;
- a Hydrologic Analysis produced by Level Design Group, L.L.C. dated September 30, 2008 (revised 11/24/08).
- Certified Abutters List
- Use Description & Project Summary
- Recorded Plans (as noted above)
- Traffic Calculations
- Earth Removal Calculations
- Operation & Maintenance Plan

1.2 Interdepartmental communication was received from:

- Acton Water Supply District, dated November 7, 2008;
- Acton Health Department, dated November 4, 2008 (revised November 26, 2008);

- Acton Tree Warden & Municipal Properties Director, dated October 23, 2008 (subsequently revised via email December 10, 2008);
  - Acton Engineering Department, dated November 4, 2008 (revised November 26, 2008);
  - Acton Fire Department, dated November 7, 2008;
  - Acton Building Department, dated November 13, 2008;
  - Acton Planning Department, dated November 12, 2008 (revised December 11, 2008); and
  - Acton Design Review Board, dated October 16, 2008.
- 1.3 Other Correspondence received:
- Copy of Previous Site Plan Special Permits #8/20/79-173 and #4/8/86-275

Exhibit 1.1 is hereinafter referred to as the Plan.

## **2 FINDINGS AND CONCLUSIONS**

Based upon its review of the exhibits and the record of the proceedings the Board finds and concluded that:

- 2.1 The Site consists of two separate and individual parcels of land which according to the Town's Assessors office, appear to have been (and continue to be) held in common ownership, dating back to 1978.
- 2.2 The front parcel of land (Parcel 78) which directly abuts Main Street, is located within a Light Industrial 1 (LI-1) Zoning District. The rear parcel of land is located within a Residence 8/4 (R-8/4) Zoning District and Affordable Housing Overlay Sub-District A. Both parcels of land are located within Groundwater Protection District Zone 4.
- 2.3 The entire property is approximately 3.8 acres (165,528 ft<sup>2</sup>) in area. The front parcel of land (Parcel 78), directly abutting Main Street is approximately 1.93 acres (84,071 ft<sup>2</sup>) and has an existing office building structure located on it. The rear parcel (Parcel 86-1) is 1.87 acres (81,457 ft<sup>2</sup>) and is currently vacant land.
- 2.4 Section 2.3.4 of the Zoning By-Law permits a zoning district boundary to be extended into an adjacent zoning district by 30 feet. For zoning purposes, the two parcels are considered to be one lot.
- 2.5 The proposed use is permitted on the Site in accordance with the Bylaw, including all overlay district requirements.
- 2.6 The existing single story structure is +/- 10,725 ft<sup>2</sup> in size, was constructed in 1950 (as per the Town of Acton Assessors Office information) and is currently used as office space. There is also an asphalt paved parking area located on the north and eastern sides of the building in addition to a one-way circular drive running across the front of the property providing access to the front of the building.
- 2.7 The proposed addition will be constructed on the south side of the existing structure and is not proposed to encroach into any front, side or rear yard setbacks. The parking area will also be extended in a southerly direction.
- 2.8 The existing FAR on the site is indicated to be 0.128. The land use data table provided on the Plans indicate that the proposed 0.19 FAR is close to the maximum 0.20 FAR under

the Bylaw. It is unclear if this number was calculated counting all of parcel 78 and only that portion of parcel 86-1 which falls under Section 2.3.4 of the By-law.

- 2.9 The application has some inconsistencies in terms of proposed and overall square footages identified which directly affect the FAR calculations and the minimum number of required parking spaces.
- 2.10 The existing vegetation which lies on the southern and southwestern boundaries of the property is especially important to maintain adequate screening for the abutting residential properties from the proposed building and parking lot additions.
- 2.11 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.12 The Board received and heard comments from concerned abutters, which have been considered by the Board in its deliberations, were responded to by the applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.13 The proposed use and the Site Plan Special Permit applied for herein is consistent with the Master Plan, will not be detrimental or injurious to the neighborhood in which the use is to take place, provides for convenient and safe vehicular and pedestrian movement within and through the site, provides an adequate number of parking spaces, provides adequate methods of refuse and waste removal from the site, and is in harmony with the purpose and intent of the Bylaw.

### **3 BOARD ACTION**

Therefore, the Board voted to GRANT the requested Site Plan Special Permit subject to and with the benefit of the following Plan modifications, conditions, and limitations.

#### **3.2 PLAN MODIFICATIONS**

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless the Zoning Enforcement Officer confirms that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Zoning Enforcement Officer. Where approvals are required from persons or agencies other than the Zoning Enforcement Officer, the Applicant shall be responsible for providing evidence of such approvals to the Zoning Enforcement Officer.

- 3.2.1 Provide in the land use data table more comprehensive and complete FAR documentation and tabulation to prove zoning compliance. Clearly document the total lot area (the entire area of parcel 78 and that portion of parcel 86-1 which falls under Section 2.3.4 of the By-Law) which forms the basis of the FAR calculations.
- 3.2.2 Correct the land use data table to accurately reflect the number of parking spaces required and provided for the proposed structure.
- 3.2.3 Indicate on the architectural plans the proposed height of the structure so that there is conformity with the specifications set forth in the zoning By-Law.
- 3.2.4 Indicate on the architectural plans whether or not there is any accessible or available basement or attic storage space which must be counted in the overall square footage and FAR numbers.

- 3.2.5 Provide in the land use data table more comprehensive and complete Open Space documentation and tabulation to prove zoning compliance.
- 3.2.6 Provide a complete lighting plan for the entire property which shall be designer certified so that the proposed outdoor lighting plan conforms to the specifications set forth in Section 10.6 of the zoning By-Law.
- 3.2.7 Add a general plan note that "requires the cleaning of catchbasin sumps and stormwater basins following construction and annually thereafter".
- 3.2.8 Add a general plan note that "describes the materials to be used in the construction of impermeable surfaces such as sidewalks and driveways (as a minimum, the BOARD requires 12" of gravel and 3" of bituminous concrete paving laid in two courses)".
- 3.2.9 The plans and documents shall be corrected and consistent in identifying the proposed uses of the subject structure and property which are permitted under the By-law.
- 3.2.10 Provide a complete landscaping plan for the area immediately surrounding the proposed addition which satisfies all of the requirements of the Zoning By-Law and specifically Section 10.4.3.6. All landscaping materials used to meet the requirements of Section 10.4.3.6 shall consist of live plants. The landscape plan shall be prepared, signed and sealed by a Registered Landscape Architect. The landscape architect shall ensure that the proposed planting list is consistent with the Acton Water District's guidelines promoting drought sensitive species and varieties.

A site meeting shall be coordinated between the applicant, concerned abutters & municipal staff (specifically the Town of Acton's Tree Warden), on-site and at a mutually agreed upon time, to explore, understand, discuss and reach an agreement upon an acceptable level of visual screening to be located along the south and southwestern boundaries of the subject property. The agreed upon landscaped buffer shall be clearly shown and identified on the landscape plan to be submitted and approved as part of the overall building permit.

- 3.2.11 Add a sidewalk plan along the entire Main Street frontage of the property. The Board's preferred route of the sidewalk is one that avoids removal of the public shade trees along Main Street and damage to their root systems, while also preserving the existing stone wall. This would mean a sidewalk on an easement behind the stone wall. Removal of public shade trees requires a public hearing under M.G.L. Chapter 87, and must comply with the Town's "Policy on the Removal of Non-Hazardous Public Shade Trees", dated January 22, 1991, which includes a requirement for inch-by-inch replacement of the diameter four feet above grade of the removed tree.
- 3.2.12 Add a plan note stating that the proposed clearing limits must be staked on the ground before construction begins, and that the limit of clearing line to the south and southwest sides of the site, as shown on the landscape plan, shall be rigidly adhered to. Any landscaping material removed along the existing tree line in order to permit the construction of the addition, shall be replaced.
- 3.2.13 Specify on the plan that the developer shall resurface the existing portion of sidewalk along the Main Street frontage of the Site.
- 3.2.14 Modify the Plan to address the comments and concerns identified by the Acton Engineering Department in a revised memo dated November 26, 2008.
- 3.2.15 Modify the Plan to address the comments and concerns identified by the Acton Heath Department in a revised memo dated November 26, 2008.

- 3.2.16 The Plan shall be modified to comply in all respects with the Bylaw. Unless directed otherwise by this decision, the Plan shall also be modified to comply with all requirements of the Rules, and to address all departmental comments received by the Board in a manner that resolves any concerns raised therein to the satisfaction of the Board.

### **3.3 CONDITIONS**

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this Site Plan Special Permit null and void, without force and effect, and shall constitute grounds for the revocation of this Site Plan Special Permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this Site Plan Special Permit using any and all powers available to it under the law.

- 3.3.1 Prior to the building permit being approved, the applicant shall furnish all relevant and necessary documentation to the satisfaction of the Zoning Enforcement Officer which provides sufficient verification of information previously obtained from the Town of Acton's Assessor's office that the requirements of Zoning By-Law Section 2.3.4 have been satisfied.
- 3.3.2 Upon completion of the new addition's foundation and prior to beginning framing of the new addition, an as-built foundation plan shall be supplied by the engineer of record certifying that the foundation was constructed according to the approved documents. In addition to the engineer of record, said plan shall be certified by a Massachusetts Registered Land Surveyor.
- 3.3.3 Prior to occupancy or use of the new portion of the building, a final as-built plan shall be supplied by the engineer of record certifying that the project was built according to the approved documents. The as-built plan shall show all pavement, building and drainage structure locations above and below grade in their true relationship to lot lines, and include appropriate grades and elevations. In addition to the engineer of record, said plan shall be certified by a Massachusetts Registered Land Surveyor.
- 3.3.4 A certified as-built lighting plan must be submitted to the satisfaction of the Zoning Enforcement Officer upon the installation of any and all exterior lighting being completed and prior to a Certificate of Occupancy being issued.
- 3.3.5 The applicant shall obtain a Disposal Works Permit from the Board of Health prior to the issuance of the Building Permit.
- 3.3.6 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that results in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.3.7 The applicant shall be diligent and ensure that absolutely no construction debris or material from the site enter any of the abutting properties or the Main Street public right-of-way due to the grade of the subject property.
- 3.3.8 No work on the Site shall begin prior to the issuance of a building permit.

- 3.3.9 All work on the Site shall be conducted in accordance with the terms of this Site Plan Special Permit and shall conform with and be limited to the improvements shown on the Plan as modified herein.
- 3.3.10 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 3.3.11 This Decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

### **3.4 LIMITATIONS**

The authority granted to the Applicant under this special permit is limited as follows:

- 3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.4.2 This special permit applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.4.4 This Site Plan Special Permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.
- 3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

### **4 APPEALS**

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Board of Selectmen

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Lauren S. Rosenzweig, Chair

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

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Eva Taylor, Town Clerk

Date

Copies furnished:

Applicant -	Building Commissioner	Health Director
certified mail #	Engineering Administrator	Municipal Properties Director
Town Clerk	Conservation Administrator	Town Manager
Fire Chief	Police Chief	Acton Water District
Owner	Historical Commission	Assistant Assessor
Design Review Board	Concord Water Department	

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